THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.32787 of 1998

Dated: 27.06.2007

Between:

Capt.Satish Chandra Maini
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… Petitioner

AND

Union of India, rep by
Secretary, Ministry of Defence,
New Delhi
And others

… Respondents

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.32787 of 1998

ORDER:-

This writ petition is filed for a writ of mandamus to set aside the action of respondents in deducting an amount of Rs.25,240/- from the pay and allowances of petitioner payable in October 1998 and also the proposed reduction of balance amount of Rs.62,073/- from the petitioner's pay and allowances from November 1998 onwards. The petitioner also sought for quashing the letter No.GI/2402/BOI dated 9.9.1998 issued by respondent No.3.

The petitioner was holding the rank of Captain in the 5th respondent organization at the relevant time. In the month of October 1998 he received statement of entitlement of pay which revealed that a sum of Rs.25,240/- was deducted and a reference to the proceedings no.GN/2402/BOI dated 9.9.1998 was given. On obtaining the copy of the said proceedings issued by the 3rd respondent he came to know that the deduction of the said amount of Rs.25,240/- and the proposed deduction of Rs.62,063/- was result of recovery of certain amounts due to the defective material supplied by supplier. It is averred in the affidavit filed in support of the writ petition that before resorting to the impugned action, the respondents failed to give notice or an opportunity to the petitioner to represent against the proposed deduction.

A counter affidavit has been filed on behalf of the respondents by Commander Surender Singh Rao, Chief Staff Officer (Personal & Administration). It is averred in the counter affidavit that certain orders for bridge plugs were placed on a firm, by name, M/s.Asmita Engineering, Pune. It was found that 21 out of 103, 4.5" rounds of VT fuse has exhibited heavy leakage of gas and blowing out of contact piece at proof firing at Proof & Experiment Establishment, Balasore. On noticing the above defects a Board of Enquiry was convened in May 1995 in accordance with Regulation 197 of Regulation of Navy Part-II (Statutory) read with Navy Order 3/S/82. They investigated into the circumstances leading to acceptance of defective armament stores by the then Senior Inspector of Naval Armament (Kirkee), the petitioner herein, leading to financial loss to the State. The petitioner was allowed to sit through the Board of Enquiry proceedings and the Board found the petitioner responsible for accepting the sub-standard material and he exhibited undue haste in accepting the said material by seeking telephone clearance from Naval Headquarters. It is further averred that the proceedings of the Board of Enquiry were approved by respondent No.2 Naval Headquarters vide letter DI/1134 dated 21.5.1997. As regards the averment that the petitioner was not given any show-cause notice, the respondents have taken a stand in the counter affidavit that the petitioner is aware of the facts leading to the recovery in question and that since the petitioner was given an option to sit through the Board of Enquiry proceedings and the enquiry had resulted in imposition of liability on the petitioner for the loss which the State incurred on account of acceptance of defective naval stores, no separate notice need be given.

Heard Sri S.M.Krishna, learned counsel for the petitioner. None appeared for respondents. It is an admitted fact that before resorting to

the recovery of alleged loss caused on account of acceptance of defective material, no notice was given to the petitioner. From the gist of the decision taken in the meeting of the Board of Enquiry as extracted at page-4 of the counter affidavit, there is nothing to indicate that the decision taken by the Board includes the decision to recover the loss from the petitioner. It cannot therefore, be presumed that the petitioner was aware of the proposed action for recovery of the alleged loss from his pay and allowances. I find force in the contention of the learned counsel for the petitioner that had a notice been given to him he would have explained to the respondents that if there was defect in material, he cannot be personally made liable for the loss caused on account of the defective material or that the petitioner was not the only person responsible for accepting the defective material. It is legally well settled that before any order prejudicially affecting the interests of a person is passed which results in adverse civil consequence he is entitled to a fair opportunity. (See **State of Orissa vs. Binapani Devi**[1], **A.K.Kraipak and Others vs. Union of India**[2], **Maneka Gandhi vs. Union of India**[3].)

Admittedly, part of proposed recovery of the further amounts towards alleged loss is not preceded by giving any notice and opportunity to the petitioner. I am therefore, of the considered view that the action of respondents in recovering a part of the alleged loss and proposing to recover the balance amount is in violation of the principles of natural justice and the action is therefore liable to be declared as illegal.

For the aforementioned reasons, the writ petition is allowed. It is however observed that this order does not preclude the respondents from initiating fresh action after giving the petitioner action oriented

notice and an opportunity of representing his case.

C.V.NAGARJUNA REDDY,J

Dt:27.06.2007
Mdaa.

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[1] AIR 1967 SC 1269

[2] 1969(2) SCC 262

[3] (1978) 1 SCC 248